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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,222	01/09/2006	Timothy Ralston Lang	DAVI256.001APC	3349
20995 7590 09/17/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER KRAUSE, ANDREW E				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
09/17/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/537,222

Applicant(s)

LANG ET AL.

Examiner

ANDREW KRAUSE

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 09 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 21-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 21-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 6/9/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Listing of Claims

1. Amended claim 1 and new 21-30 are pending. Claims 2-20 are cancelled.

Response to Amendment

2. Applicant has alleged that the original claim set was mistakenly stamped "ART 34 AMDT". Applicant wishes to have this claim set examined, and has amended the claims to reflect these claims. However, no evidence on the record of the pending application suggests that the claims were ever mistakenly entered. In fact, the previously examined claims were the newest set on the record, filed by applicant in a preliminary amendment dated 01/09/2006, thereby replacing the allegedly mistaken claim sets, filed 6/3/05. Further, a restriction requirement was issued on 10/17/2008 based on the 01/09/2006 claims, which unlike the 'ART 34 AMDT' claims do not recite 'reverse osmosis' as a common technical feature. An election of the previously pending claims 1-10 was made, without traverse, on 11/14/08.

Claim Rejections - 35 USC § 112

3. Claims 25 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 25 recites the limitation 'microfiltered with a cross-flow filter'. This limitation renders the scope of the claim indefinite as there is no disclosure in the specification of what applicant considers a microfilter.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. **Claims 1, 21-28,30-31** are rejected under 35 U.S.C. 103(a) as being unpatentable over Klingner (WO 99/06526) in view of 'Vinnovation- 'Uses of R.O.'.

7. **Regarding claims 1,21,23,24,25**, Klingner discloses a method of processing plant material residue remaining after primary juice has been extracted from the plant material (marc, the grape material left after juice extraction), said method comprising the steps of:

- a. Extracting, using diffusion extraction, a liquid portion from said plant material residue (page 5, lines 18-26, water is added to grape marc to extract dissolved and suspended materials);
- b. Fractioning secondary juice from said liquid portion (page 5 lines 23-26, the juice is fraction by a variety of means, such as filtration, centrifuge, and evaporation) to obtain a residue (extract) and a permeate; and

- c. Collecting at least a portion of the permeate for use as a recovered juice or in recovered wine (page 2, lines 8-11).
- 8. Klingner differs from the present claims in that the present claims require using reverse osmosis as the fractionation method and recycling a portion of the permeate as an extraction liquid.
- 9. Klingner discloses that the use of reverse osmosis to recover wine extracts is well known in the art, but was not preferred due to high replacement costs and filter clogging (p. 1, line 22-p.2, line 3). Vinovation discloses the use of cross flow filtration in combination with reverse osmosis fractionation in wine applications in order to prevent filter plugging (p. 1, paragraphs 1-3). The combination of cross flow filtration and reverse osmosis cures the deficiency of reverse osmosis filtration noted by Klingner, and enables its use as a fractionation method. It would have been obvious to one having ordinary skill in the art at the time of the invention to use reverse osmosis as the fractionation method in order to enable the production of wines with enhanced flavor and compositions (p. 1, para. 5). Given the low molecular weight cut-off of the filters used in Vinovation, the process is considered to meet the limitation micro-filtration.
- 10. Klingner discloses that the water used for the extraction should be "derived from a grape source" (page 5, line 20). The permeate byproduct of the method of Klingner and Vinovation provides a water derived from a grape source (Vinnovation para. 3), and

one having ordinary skill in the art at the time of the invention would find it obvious to reuse this liquid as an extractant "derived from a grape source" in order to prevent waste that would result from simply discarding the permeate.

11. Regarding claim 22, Klingner discloses recovering water from a solid portion remaining after said liquid portion is extracted by evaporation (page 5, lines 20-26, page 6, lines 12-18). Although pressing the marc and collecting the liquid is not explicitly disclosed, the concept of applying pressure to a mixture of solids and liquids to remove the liquid substance is well known in the art. Using this technique to assist in water recovery in combination with evaporation would have been obvious to one having ordinary skill in the art at the time of the invention in order to reduce the moisture content of the marc prior to evaporation, thereby increasing the efficiency of the process.

12. Regarding claim 26, Klingner further discloses recovering alcohol from the water corresponding to the permeate stream in the method of Klingner and Vinovation (p. 3, lines 30-34).

13. Regarding claim 27, Klingner discloses mixing the recovered alcohol with the extracted components (page 3, lines 35-38).

14. Regarding claim 28, Klingner discloses recovering tartrate crystals (page 3, lines 25-30).

15. Regarding claims 30 and 31, the juice is recovered from grape marc such as red wine marc. Although white wine marc is not explicitly disclosed, the process is not limited to red grapes or just grapes (p. 1, lines 4-9). One having ordinary skill in the art at the time of the invention would find it obvious to use the method with white wine marc as well as red, given the disclosure that the process is useful with grape marc (p. 1 line 5) which may be red or white.

16. **Claim 29** is rejected under 35 U.S.C. 103(a) as being unpatentable over Klingner (WO 99/06526) in view of 'Vinoation- 'Uses of R.O.' and Lang (US 5,738,003).

17. Klingner and Vinovation disclose the method of claim 1, but fail to explicitly disclose the use of a counter current diffusion extractor. However, Lang discloses a counter current diffusion extractor for the extraction of grape marc (col. 4, lines 13-25). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Klingner and Vinovation by using a counter current diffusion extractor as disclosed by Lang, because these extractors enable valuable solutes to be exhaustively extracted from grape marc residues (col. 4, lines 20-25).

Response to Arguments

18. Applicant's arguments filed 6/9/09 have been fully considered as much as they apply to the present claims but they are not persuasive.

19. Applicant alleges that Klingner characterizes reverse osmosis as unsuitable for processing marc. This is not deemed persuasive. In fact Klingner states that it is known to use reverse osmosis to recover wine extracts and derivatives from wine marc. While Klingner notes some difficulties and disadvantages to using reverse osmosis on its own, this is not the same as teaching that the process is unsuitable for use with marc as alleged by applicant.

Conclusion

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW KRAUSE whose telephone number is (571)270-7094. The examiner can normally be reached on 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ANDREW KRAUSE/
Examiner, Art Unit 1794

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794